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Attorneys for Defendants  
Forever 21, Inc. and Forever 21 Retail, Inc.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

ADOBE SYSTEMS INCORPORATED, a  
Delaware corporation, AUTODESK, INC., a  
Delaware corporation and COREL  
CORPORATION, a Canadian corporation,  
Plaintiffs,

v.

FOREVER 21, INC., a Delaware corporation,  
and FOREVER 21 RETAIL, INC., a  
California Corporation,  
Defendants.

Case No. 3:15-cv-00404-WHA

**DEFENDANTS FOREVER 21, INC.,  
AND FOREVER 21 RETAIL, INC.'S  
ANSWER TO COMPLAINT**

**JURY TRIAL DEMANDED**

Hon. William Alsup

Defendants Forever 21, Inc., and Forever 21 Retail, Inc. (collectively, “Forever 21”) answer the complaint (“Complaint”) of plaintiffs Adobe Systems Incorporated (“Adobe”), Autodesk, Inc. (“Autodesk”), and Corel Corporation (“Corel”) (collectively, “Plaintiffs”) as follows:

## **JURISDICTION AND VENUE**

### **Parties**

1. Forever 21 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1, and therefore denies them.

2. Forever 21 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2, and therefore denies them.

3. Forever 21 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3, and therefore denies them.

4. Forever 21 admits that Forever 21, Inc., is a Delaware corporation with its principal place of business at 3880 N. Mission Road, Los Angeles, California 90031.

5. Forever 21 admits that Forever 21 Retail, Inc., is a Delaware corporation with its principal place of business at 3880 N. Mission Road, California 90031.

6. Forever 21 admits that Forever 21 Retail, Inc., is a wholly-owned subsidiary of Forever 21, Inc. Forever 21 denies any remaining allegations of paragraph 6.

### **Jurisdiction**

7. Forever 21 admits that this action purports to invoke the copyright laws of the United States, title 17 of the United States Code. Forever 21 admits that title 17, section 501, and title 28, sections 1331 and 1338(a) of the United States Code confer jurisdiction as to claims arising under the copyright laws and claims arising under the laws of the United States upon this Court. Forever 21 denies any remaining allegations of paragraph 7.

8. Forever 21 admits the allegations of paragraph 8.

### **Venue**

9. Forever 21 admits that venue is proper in the Northern District of California. Forever 21 denies any remaining allegations of paragraph 9.

**Intradistrict Assignment**

10. Forever 21 admits the allegations of paragraph 10.

**GENERAL ALLEGATIONS**

**Introduction**

11. Forever 21 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11, and therefore denies them.

12. Forever 21 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12, and therefore denies them.

13. Forever 21 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13, and therefore denies them.

14. Forever 21 denies the allegations of paragraph 14, and specifically denies that Forever 21 has infringed or is liable for infringement of any valid and enforceable copyright identified in the Complaint. Forever 21 further denies that Plaintiffs have incurred any actual damages as a result of the alleged infringement.

15. Plaintiffs' request for injunctive relief, damages, costs, and attorney's fees does not state any allegation, and Forever 21 is not required to respond. Forever 21 denies that Plaintiffs are entitled to any of the requested relief and denies any allegations contained in the request to which a response is required.

**Adobe's Software Products and Copyrights**

16. Forever 21 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16, and therefore denies them.

17. Forever 21 states that the allegations of paragraph 17 with respect to the Copyright Act, are legal conclusions, which require no response. Forever 21 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17, and therefore denies them.

18. Forever 21 states that the allegations of paragraph 18 with respect to the Copyright Act, are legal conclusions, which require no response. Forever 21 is without

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1 knowledge or information sufficient to form a belief as to the truth of any remaining allegations  
2 of paragraph 18, and therefore denies them.

3 19. Forever 21 states that the allegations of paragraph 19 with respect to the  
4 Copyright Act, are legal conclusions, which require no response. Forever 21 is without  
5 knowledge or information sufficient to form a belief as to the truth of the allegations of  
6 paragraph 19, and therefore denies them.

7 20. Forever 21 states that the allegations of paragraph 20 with respect to violation of  
8 the Adobe Copyrights are legal conclusions, which require no response. Forever 21 admits that  
9 Adobe never specifically authorized Forever 21 to violate any copyright law. Forever 21 denies  
10 the remaining allegation of paragraph 20 that Adobe did not authorize Forever 21 to copy or  
11 reproduce the Adobe Products, and denies any remaining allegations of paragraph 20.

### 12 **Autodesk's Software Products and Copyrights**

13 21. Forever 21 is without knowledge or information sufficient to form a belief as to  
14 the truth of the allegations of paragraph 21, and therefore denies them.

15 22. Forever 21 states that the allegations of paragraph 17 with respect to the  
16 Copyright Act, are legal conclusions, which require no response. Forever 21 is without  
17 knowledge or information sufficient to form a belief as to the truth of the allegations of  
18 paragraph 22, and therefore denies them.

19 23. Forever 21 states that the allegations of paragraph 18 with respect to the  
20 Copyright Act, are legal conclusions, which require no response. Forever 21 denies that the  
21 document attached to the Complaint as Exhibit B is a Certificate of Registration from the  
22 Register of Copyrights, or shows that Autodesk ever received such certificate with respect to the  
23 products listed. Forever 21 is without knowledge or information sufficient to form a belief as to  
24 the truth of any remaining allegations of paragraph 23, and therefore denies them.

25 24. Forever 21 states that the allegations of paragraph 24 with respect to the  
26 Copyright Act, are legal conclusions, which require no response. Forever 21 is without  
27 knowledge or information sufficient to form a belief as to the truth of the allegations of  
28 paragraph 24, and therefore denies them.

1           25. Forever 21 states that the allegations of paragraph 20 with respect to violation of  
2 the Autodesk Copyrights are legal conclusions, which require no response. Forever 21 admits  
3 that Autodesk never specifically authorized Forever 21 to violate any copyright law. Forever 21  
4 denies the remaining allegation of paragraph 25 that Autodesk did not authorize Forever 21 to  
5 copy or reproduce the Autodesk Products, and denies any remaining allegations of paragraph  
6 25.

7                           **Corel's Software Products and Copyrights**

8           26. Forever 21 is without knowledge or information sufficient to form a belief as to  
9 the truth of the allegations of paragraph 26, and therefore denies them.

10          27. Forever 21 states that the allegations of paragraph 27 with respect to the  
11 Copyright Act, are legal conclusions, which require no response. Forever 21 is without  
12 knowledge or information sufficient to form a belief as to the truth of the allegations of  
13 paragraph 27, and therefore denies them.

14          28. Forever 21 states that the allegations of paragraph 28 with respect to the  
15 Copyright Act, are legal conclusions, which require no response. Forever 21 is without  
16 knowledge or information sufficient to form a belief as to the truth of any remaining allegations  
17 of paragraph 28, and therefore denies them.

18          29. Forever 21 states that the allegations of paragraph 29 with respect to the  
19 Copyright Act, are legal conclusions, which require no response. Forever 21 is without  
20 knowledge or information sufficient to form a belief as to the truth of the allegations of  
21 paragraph 29, and therefore denies them.

22          30. Forever 21 states that the allegations of paragraph 30 with respect to violation of  
23 the Corel Copyrights are legal conclusions, which require no response. Forever 21 admits that  
24 Corel never specifically authorized Forever 21 to violate any copyright law. Forever 21 denies  
25 the remaining allegation of paragraph 30 that Corel did not authorize Forever 21 to copy or  
26 reproduce the Corel Products, and denies any remaining allegations of paragraph 30.

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**The Business and Infringing Activities of Defendants**

31. Forever 21 admits that it is in the business of retailing consumer products, including garments and related accessories.

32. Forever 21 admits that it uses some of the Adobe Products, Autodesk Products, and Corel Products in the course of its business, but denies that its use of such products constitutes “unauthorized reproduction” or infringes on any valid and enforceable copyright of the Plaintiffs. Forever 21 denies any remaining allegations of paragraph 32.

33. Forever 21 denies the allegations of paragraph 33.

34. Forever 21 denies the allegations of paragraph 34.

35. Forever 21 denies the allegations of paragraph 35.

36. Forever 21 denies the allegations of paragraph 36.

**FIRST CLAIM FOR RELIEF**

**(Copyright Infringement by All Plaintiffs Against Both Defendants)**

37. Forever 21 incorporates by reference its responses to the allegations of paragraphs 1 through 36 above as its response to paragraph 37 of the Complaint.

38. Forever 21 denies the allegations of paragraph 38, and specifically denies that it has infringed or is liable for infringement of any valid and enforceable copyright asserted in this action by the Plaintiffs.

39. Forever 21 denies the allegations of paragraph 39, and specifically denies that it has infringed or is liable for infringement of any valid and enforceable copyright asserted in this action by the Plaintiffs. Forever 21 further denies that Plaintiffs have incurred any actual damages as a result of the alleged infringement.

40. Forever 21 denies the allegations of paragraph 40, and specifically denies that it has infringed or is liable for infringement of any valid and enforceable copyright asserted in this action by the Plaintiffs. Forever 21 further denies that Plaintiffs have incurred any actual damages as a result of the alleged infringement. Forever 21 further denies that money damages would be difficult to ascertain or are incapable of affording Plaintiffs complete relief, or that injunctive relief is an appropriate remedy in this case.

**SECOND CLAIM FOR RELIEF**  
**(Circumvention of Copyright Protection Measures,**  
**by All Plaintiffs Against Both Defendants)**

41. Forever 21 incorporates by reference its responses to the allegations of paragraphs 1 through 40 above as its response to paragraph 41 of the Complaint.

42. Forever 21 is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42, and therefore denies them.

43. Forever 21 denies the allegations of paragraph 43, and specifically denies that it has circumvented or is liable for the circumvention of any valid copyright protection measures employed with respect to the copyrights asserted in this action by Plaintiffs.

44. Forever 21 denies the allegations of paragraph 44, and specifically denies that it has circumvented or is liable for the circumvention of any valid copyright protection measures employed with respect to the copyrights asserted in this action by Plaintiffs. Forever 21 further denies that Plaintiffs have incurred any actual damages as a result of the alleged circumvention of copyright.

45. Forever 21 denies the allegations of paragraph 45, and specifically denies that it has circumvented or is liable for the circumvention of any valid copyright protection measures employed with respect to the copyrights asserted in this action by Plaintiffs. Forever 21 further denies that Plaintiffs have incurred any actual damages as a result of the alleged circumvention of copyright protection measures. Forever 21 further denies that money damages would be difficult to ascertain or are incapable of affording Plaintiffs complete relief, or that injunctive relief is an appropriate remedy in this case.

**PRAYER FOR RELIEF**

These paragraphs set forth the statement of relief requested by Plaintiffs to which no response is required. Forever 21 denies that Plaintiffs are entitled to any of the requested relief and denies any allegations contained in the Prayer for Relief to which a response is required.

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**DEMAND FOR JURY TRIAL**

Plaintiffs' demand for a jury trial does not state any allegations, and Forever 21 is not required to respond. To the extent that any allegations are included in the demand, Forever 21 denies these allegations.

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Forever 21 denies each and every allegation of the Complaint not specifically admitted or otherwise responded to above. Forever 21 specifically denies that Forever 21 has infringed or is liable for the infringement of any valid and enforceable copyright of Plaintiffs. Forever 21 further denies that it has circumvented or is liable for the circumvention of any copyright protection measures employed with respect to the copyrights asserted in this action by Plaintiffs. Forever 21 further specifically denies that Plaintiffs are entitled to any relief whatsoever of any kind against Forever 21 as a result of any act of Forever 21 or any person or entity acting on behalf of Forever 21.

**DEFENSES**

**First Defense—No Copyright Infringement**

1. Forever 21 has not infringed, does not infringe (either directly or indirectly), and is not liable for infringement of any valid copyright or copyright rights of Plaintiffs, including, without limitation, any copyright rights in the works that are the subject of the Adobe Copyrights, the Autodesk Copyrights, or the Corel Copyrights (collectively, the "Asserted Copyrights").

**Second Defense—Elements Not Protected by Copyright**

2. Plaintiffs' copyright claims are barred to the extent that Plaintiffs claim rights to elements of Plaintiffs' software or other works that are functional, are not original, or are otherwise not protectable and/or are not protected by the Asserted Copyrights.

**Third Defense—Copyright Unenforceability (Waiver, Estoppel, Laches)**

3. Plaintiffs' Asserted Copyrights are unenforceable because Plaintiff's delayed bringing this suit for a period of nearly two years after while they sought to compel Forever 21 to agree to exorbitant and unfavorable license terms for the works that are the subject of the



1 Asserted Copyrights. Plaintiffs' delay in bringing the suit was unreasonable and inexcusable,  
2 and Forever 21 suffered material prejudice due to the delay.

3 4. Plaintiffs' Asserted Copyrights are unenforceable because Forever 21 is  
4 informed and believes and alleges thereon that Plaintiffs knowingly waived any right they may  
5 have to enforce their Asserted Copyrights.

#### 6 **Fourth Defense—Copyright Misuse**

7 5. Plaintiffs have misused the Asserted Copyrights by attempting to secure  
8 exclusive rights or monopolies not granted by the Copyright Office, including, without  
9 limitation, by requiring licensees of the Asserted Copyrights to preserve documents indefinitely  
10 in the event of a claim of copyright infringement, and forcing licensees to allow Plaintiffs to  
11 enter the licensees' premises and inspect licensees' records.

#### 12 **Fifth Defense—Fair Use**

13 6. Plaintiffs' claims for copyright infringement are barred by the doctrine of fair use  
14 pursuant to title 17, section 107 of the United States Code in view of the nature of the works  
15 asserted by Plaintiffs and covered by the Asserted Copyrights, the amount (if any) and  
16 substantiality of the portions of such works used by Forever 21 in relation to the works as a  
17 whole, the purpose and character of any use thereof made by Forever 21, and the effect, if any,  
18 of such use on the potential market for the works.

#### 19 **Sixth Defense—De Minimis Copying**

20 7. Plaintiffs' claims for copyright infringement are barred by the doctrine of de  
21 minimis copying, as any protectable portions of the works that are the subject of the Asserted  
22 Copyrights used by Forever 21 have been de minimis.

#### 23 **Seventh Defense—Third Party Liability**

24 8. Forever 21 is not liable for use of any protected elements of the works that are  
25 the subject of the Asserted Copyrights that was made by third parties without the knowledge of  
26 Forever 21.

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**Eighth Defense—License**

9. Forever 21 has received from Plaintiffs licenses to use the works that are the subject of the Asserted Copyrights.

**Ninth Defense—Implied License**

10. Plaintiffs' statements and actions were such that it was reasonable to infer that Forever 21 had permission to use the works that are the subject of the Asserted Copyrights including, without limitation, by providing the works in bundles with other software, such as operating systems, at no additional cost.

**Tenth Defense—Single Work**

11. Forever 21 is informed and believes, and alleges thereon, that the works that are the subject of the Asserted Copyrights are marketed, sold, and used collectively and as part of larger combined or compiled products or "suites." If Plaintiffs elect statutory damages, such damages are limited to the actual number of discrete works allegedly infringed.

**Eleventh Defense—No Circumvention of Copyright Protection Measures**

12. Forever 21 has not descrambled a scrambled work, decrypted and encrypted work, or otherwise avoided, bypassed, removed, deactivated, or impaired any technological measure employed to protect any of the Asserted Copyrights.

**Twelfth Defense—Innocent Violations**

13. Plaintiffs are not entitled to damages for their claim for circumvention of copyright protection measures because any such circumvention was innocent within the meaning of title 17, section 1203(c)(5).

**Thirteenth Defense—Unclean Hands**

14. Forever 21 is informed and believes, and alleges thereon, that Plaintiffs have come to the Court with unclean hands due to their practice of paying unidentified third parties to "inform" on alleged infringers and then demanding exorbitant license fees to avoid a lawsuit.

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**Fourteenth Defense—No Injunctive Relief**

15. Plaintiffs have not suffered any irreparable injury, Plaintiffs have an adequate remedy at law, and injunctive relief would be contrary to the public interest, and Plaintiffs are not entitled to injunctive relief.

**Fifteenth Defense—No Actual Damages**

16. Plaintiffs have not incurred any actual damages because Forever 21 has purchased licenses for a greater quantity of works that are the subject of the Asserted Copyrights than the quantity of the works that Forever 21 actually uses.

**DEMAND FOR JURY TRIAL**

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Civil Local Rule 3-6(a), Forever 21 respectfully demands a jury trial of all issues triable to a jury in this action.

Dated: April 15, 2015

**STEPTOE & JOHNSON LLP**

By: /s/ Seong H. Kim  
SEONG H. KIM

Attorneys for Defendants Forever 21, Inc. and Forever 21 Retail, Inc.